

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No.  
 ) 13-00286-01-CR-W-GAF  
 JOSHUA KAIN SMITH, )  
 )  
 Defendant. )

FOR THE PLAINTIFF:  
MS. TERESA A. MOORE  
Assistant United States Attorney  
Charles Evans Whittaker Courthouse  
400 East Ninth Street, Floor 5  
Kansas City, Missouri 64106

Case 4:13-cr-00286-GAF Document 46 Filed 05/28/15 Page 1 of 10

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APRIL 20, 2015

THE COURT: Ready, Ms. Moore?

MS. MOORE: Yes. Thank you, Your Honor.

THE COURT: Ms. Hughes, are you ready?

MS. HOLLOMAN-HUGHES: Yes, sir.

THE COURT: Ms. Hughes, you've reviewed the  
presentence report with Mr. Smith; is that correct?

MS. HOLLOMAN-HUGHES: That's correct, Your Honor.

THE COURT: And you don't have any reason to object  
to any of the information?

MS. HOLLOMAN-HUGHES: No, Your Honor.

THE COURT: Thank you.

As reflected in Mr. Smith's presentence report,  
under the United States Sentencing Guidelines, his total  
offense level is 39. His criminal history category is IV. The  
guidelines recommend consideration of a range from 360 months  
to life. There is a statutory minimum of 15 years and a  
maximum of life on Counts 1 and 2 each.

The parties have entered into a plea agreement which  
is a binding plea agreement where the parties request a  
sentence of 240 months. Based upon my review of the  
information in the presentence report, I'm inclined to accept  
the agreed sentence between the parties finding that to be  
reasonable and appropriate given the agreement of the parties  
and all of the statutory factors for consideration under 18

1 U.S.C., Section 3553.

2 Ms. Holloman-Hughes, would you like to speak any  
3 further on any of these matters?

4 MS. HOLLOMAN-HUGHES: No, Your Honor. I would just  
5 like to request placement.

6 THE COURT: All right.

7 MS. HOLLOMAN-HUGHES: Mr. Smith actually has his  
8 GED. He did fairly well on it so he applied for and was  
9 accepted to Westlawn Institute of Marine Technology. They  
10 actually have courses for inmates. He needs access to a  
11 computer with AutoCAD and he's researched where that would be,  
12 and so one of the places that he could go and be placed into  
13 that program would be Petersburg, Virginia. He would like the  
14 Court to recommend that. However, his mother and children are  
15 in Florida, so he would actually rather be closer to them, and  
16 the placement for Florida would be Marianna, Florida, Your  
17 Honor. So we ask the Court to consider Marianna -- recommend  
18 Marianna first, then Petersburg, Virginia, to the BOP second.

19 THE COURT: All right. I will make those  
20 recommendations. And if you would speak with Ms. Moore when  
21 we're done to make sure that she has the correct names of the  
22 institutions that you're requesting.

23 MS. HOLLOMAN-HUGHES: Thank you.

24 THE COURT: Mr. Smith, is there anything you would  
25 like to say this afternoon before I finally determine your

1 sentence?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right.

4 THE DEFENDANT: I would just like to say that I take  
5 full accountability for my actions and that I hope I can change  
6 and become a productive member of society by the time I get  
7 out.

8 THE COURT: All right. Thank you, sir.

9 Ms. Moore, anything from you?

10 MS. MOORE: Yes, Your Honor, the government does  
11 have a couple things we would like to request of the Court as  
12 set out in the presentence investigation. Victim No. 1 has  
13 requested restitution, and the government does have some  
14 information, some documents regarding that restitution that I  
15 have provided defense counsel and have marked as Government's  
16 Exhibit No. 1 that I would like to present to the Court. It's  
17 a letter from the victim's therapist, it's her 2011 information  
18 about her tax return, some information about when she worked at  
19 Tan-Tar-A prior to leaving for Florida with the defendant, and  
20 the victim has also indicated, and I think it's been set out at  
21 least somewhat in the presentence investigation, that the  
22 defendant traded the victim's car for another vehicle which she  
23 did not then retain when she fled Florida and got away from the  
24 defendant.

25 So with all that put together, the victim is

1 requesting 23 thousand, I believe, 4 hundred 60 dollars in  
2 restitution, and I have prepared a proposed restitution order  
3 that I had sent to the Court earlier today asking for  
4 restitution in that amount.

5 In addition, Victim No. 1 has provided the  
6 government with a victim impact statement. She had  
7 contemplated being here today and had decided that it was too  
8 stressful for her and has asked that I read this to the Court  
9 or I can -- Ms. Holloman-Hughes already has a copy of it -- or  
10 I can also provide it to the Court to read, if you like.

11 THE COURT: All right. If you will provide it to  
12 me, I'll read it.

13 MS. MOORE: Okay. And I did not mark it as an  
14 exhibit.

15 THE COURT: Ms. Holloman-Hughes, do you have any  
16 objection to Exhibit 1?

17 MS. HOLLOMAN-HUGHES: No, Your Honor.

18 THE COURT: Thank you.

19 MS. MOORE: And then I would just let the Court and  
20 counsel know, government does request a life term of supervised  
21 release to follow Mr. Smith's incarceration in the Bureau of  
22 Prisons, and I would request a special condition of that  
23 supervised release that the defendant have no contact with  
24 Victim No. 1 or Victim No. 2; and, in addition, they have no  
25 contact with their direct family members.

1 THE COURT: Were the contact terms proposed in the  
2 special conditions of the presentence report, or do you know,  
3 Ms. Moore?

4 MS. MOORE: They are not and I would -- I know that  
5 the victims would appreciate that certainly, Your Honor.

6 THE COURT: All right. Let me read this statement.

7 All right. Anything further from you, Ms. Hughes?

8 MS. HOLLOMAN-HUGHES: No, sir.

9 THE COURT: All right. The victim's statement is  
10 pretty compelling in terms of the statutory considerations of  
11 sentencing, speaking to the nature and circumstances of the  
12 offense, which were horrific, and the defendant's  
13 characteristics, exhibits no concern for the victim whatsoever,  
14 taking all that into consideration and the need for the  
15 sentence to reflect the seriousness of the offense, promote  
16 respect for the law, provide just punishment, afford adequate  
17 deterrence to criminal conduct, and protect the public from  
18 future crimes, as well as provide the defendant with needed  
19 correctional treatment, which obviously the defendant is in  
20 need of some treatment, as I said before, I accept the agreed  
21 sentence between the parties of 240 months in custody of the  
22 Bureau of Prisons of Counts 1 and 2 with those counts to run  
23 concurrently.

24 And upon the defendant's release, I'm going to order  
25 he be placed on supervised release for lifetime. I'm going to

1 order the defendant comply with all of the mandatory and  
2 special -- normal conditions for supervision that have been  
3 adopted by this court as well as the special conditions listed  
4 in Part D of the presentence report. And, additionally, the  
5 special condition that the defendant have no contact with  
6 either of the victims in this case or anyone who is a direct  
7 family member of either of those victims.

8 And, Ms. Holloman-Hughes, I take it you've reviewed  
9 the conditions in Part D of the presentence report?

10 MS. HOLLOMAN-HUGHES: Yes, Your Honor.

11 THE COURT: I find that the defendant does not have  
12 the ability to pay a fine so I waive the imposition of any  
13 fine, but he is ordered to pay a special assessment in the  
14 amount of \$200, which is due immediately.

15 The defendant is also ordered to pay restitution in  
16 the amount of \$23,406 to Andrea Caddell pursuant to the written  
17 order that I am executing setting forth the terms and  
18 conditions of that order of restitution.

19 Do you have something on that?

20 MS. HOLLOMAN-HUGHES: Not restitution, Your Honor,  
21 but my client would like the Court to order the RDAP program.

22 THE COURT: Okay. Mr. Smith.

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: I'm sorry. You said Mr. Smith would  
25 like the RDAP program?

1 MS. HOLLOMAN-HUGHES: Yes.

2 THE COURT: Okay. I'm sorry. I misunderstood you.  
3 I will recommend to the Bureau of Prisons, along with the  
4 recommendation for placement, that Mr. Smith be accepted to the  
5 bureau's 500-hour drug treatment, RDAP program.

6 And, finally, Mr. Smith, I'm going to order you be  
7 retained in custody for service of the sentence imposed.

8 As I'm sure you know, there was a waiver of your  
9 right to appeal under the terms of your binding plea agreement.  
10 Nonetheless, if you believe there is a basis for appeal that  
11 was not waived, you need to know that you have only 14 days  
12 after the day the sentence is imposed to file a notice of your  
13 intent to appeal. If you do not file that notice of intent to  
14 appeal within 14 days of today, your right to appeal will be  
15 waived, regardless of whether it's a matter addressed under the  
16 terms of your plea agreement or otherwise.

17 And my clerk who is seated here just to my left has  
18 a form that she will give you that you can use to file that  
19 notice of intent to appeal if it's something you wish to  
20 pursue.

21 Anything further from you, Ms. Moore?

22 MS. MOORE: Yes, Your Honor. Pursuant to the plea  
23 agreement, the government dismisses Counts 3 through 5 of the  
24 amended indictment.

25 THE COURT: Those counts are dismissed at the



1 government's request.

2 Ms. Holloman-Hughes?

3 MS. HOLLOMAN-HUGHES: No, sir, Your Honor.

4 THE COURT: Thank you all.

5 (Adjournment)

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CERTIFICATE OF OFFICIAL REPORTER

I, Katherine A. Calvert, Federal Official Court Reporter, in and for the United States District Court for the Western District of Missouri, do hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings in UNITED STATES OF AMERICA, Plaintiff, vs. JOSHUA KAIN SMITH, Defendant, No. 13-00286-01-CR-W-GAF.

Dated this 28th day of May 2015.

KATHERINE A. CALVERT, RMR, CRR  
FEDERAL OFFICIAL COURT REPORTER